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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

MARTIN et al. v. COMMONWEALTH (two cases).

Sept. 17, 1919.

[100 S. E. 836.]

1. Courts (§ 97 (5)*)—Decision of Federal Supreme Court Binding on State Court.—Decisions of the Supreme Court of the United States upon all questions involving interstate commerce are conclusive upon the state courts.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc., Dig. 866.]

2. Criminal Law (§ 560*)—Degree of Proof.—Suspicion of guilt cannot be substituted for proof.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 91.]

3. Criminal Law (§ 308*)—Presumption of Innocence.—All men will be presumed to be innocent until their guilt has been established beyond a reasonable doubt.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 75.]

4. Intoxicating Liquors (§ 138*)—Transportation of Liquors Through State Not Violation of Prohibition Law.—Employés on an interstate train passing through the state were passengers, and could not be convicted under the State Prohibition Law by proof that more than one quart of liquor was found in their possession, in the absence of evidence that they intended to dispose of the same while in the state; such employes being protected by the Commerce Clause of the federal Constitution, and the Reed Amendment (U. S. Comp. St. 1918, § 8739a) to the Webb-Kenyon Act March 1, 1913 (U. S. Comp. St. § 8739), not prohibiting the transportation of liquor through a state.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 869; 8 Va.-W. Va. Enc. Dig. 22; see 16 Va.-W. Va. Enc. Dig. 731.]

5. Intoxicating Liquors (§ 138*)—Transportation Through State Not Prohibited.—Acts 1916, c. 146, does not prohibit the transportation of liquor through the state, nor a passenger passing through the state from having liquor in his possession while on the train of an interstate carrier passing through the state.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 548.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Intoxicating Liquors (§ 224*)—Burden of Proof; Possession of Liquor.—An employee on a train of an interstate carrier passing through the state did not have the burden, under Acts 1919, c. 146, to prove that he was on an interstate journey through the state; although ardent spirits in excess of one quart were found in his possession, the evidence for the state showing that the liquor was found upon the train itself.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 33.]

Error to Corporation Court of Roanoke.

Martin and White were convicted for violation of the Prohibition Law, and bring error. Reversed.

Hoge & Darnall and *Hairston & Hairston*, all of Roanoke, for plaintiffs in error.

Jno. R. Saunders, Atty Gen., and *J. D. Hank, Jr., Asst. Atty. Gen.*, for the Commonwealth.

WASHINGTON-VIRGINIA RY. CO. *v.* DEAHL.

Sept. 17, 1919

[100 S. E. 840.]

1. Evidence (§ 244 (15)*)—Admissions by Carrier's Claim Agent.—Where a passenger on an electric railway car which collided with a truck claimed that she was injured as the result of the collision, testimony that the claim agent of the railway company who investigated the passenger's claim and the circumstances surrounding the accident told the passenger that the controller was broken, and that was the reason the motorman could not stop the car, is admissible, despite the rule against hearsay; the declaration being within the scope of the claim agent's authority.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 339.]

2. Appeal and Error (§ 236 (2)*)—Objections in Lower Court; Variance Waived.—In an action by a passenger injured when an electric railway car collided with a motortruck, where the declaration alleged that the company ran its train negligently without having the same under proper control, and without a timely application of the brakes, defendant cannot complain of the admission over objection of evidence that the controller was broken, and that that was the reason the motorman could not stop the car, for the court might readily have required the amendment to the declaration and no continuance was requested on the ground of surprise.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 563; 13 Va.-W. Va. Enc. Dig. 484.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.